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No. 690

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

ROBERT H. MARTIN,
Petitioner,

vs.

PHILLIPS PETROLEUM COMPANY, ET AL.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF RESPONDENTS CHEMICAL BANK NEW YORK TRUST COMPANY, TEXAS SAN JUAN OIL CORPORATION, AND TENSAS GAS GATHERING CORPORATION IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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November 15, 1966

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Petitioner seeks review of the decision of the Fifth Circuit affirming summary judgment for respondents and denial of petitioner's cross-motion for summary judgment. The petition should be denied.

The United States District Court for the Southern District of Texas, Houston Division (Ben C. Connally, Ch. J.), dismissed petitioner's complaint for treble damages after reviewing the extensive record including some 8,000 pages of testimony in 35 depositions taken by petitioner, thousands of pages of exhibits marked during those depo-

sitions, and the numerous answers of various respondents to petitioner's interrogatories. The District Court concluded that all relevant facts were before it, that there was no genuine dispute concerning any material fact, and that:

> "After the most exhaustive discovery touching every phase of this controversy, this record falls far short of showing a cause of action for violation of the antitrust laws. . . ." (R. 959)

The Court of Appeals likewise considered the extensive record and, on the basis of facts found to be undisputed or admitted by petitioner, held unanimously that petitioner by his own admissions does not have a claim under the federal antitrust laws.

The petition for writ of certiorari asks this Court to review all the facts in the case. Those facts show that petitioner was not "injured in his business or property" and therefore has no claim upon which relief may be granted under the federal antitrust laws. Hence it is the position of respondents Chemical Bank New York Trust Company ("the Bank"), Texas San Juan Oil Corporation ("Texas San Juan"), and Tensas Gas Gathering Corporation ("Tensas") that the decisions below were correct.

Question Presented

Should this Court review the undisputed and admitted facts on the basis of which the courts below held that petitioner was not "injured in his business or property" within the scope of the federal antitrust law?

Statutes Involved

In addition to the federal antitrust statutes set forth in the petition (pp. 4-6), the following provision of the

Louisiana Civil Code is referred to by both petitioner and respondents:

> "Art. 2440. All sales of immovable property shall be made by authentic act or under private signature.
>
> "Except as provided in article 2275, every verbal sale of immovables shall be null, as well for third persons as for the contracting parties themselves, and the testimonial proof of it shall not be admitted."

Facts

In October 1960 George Jett acquired an exclusive option to purchase from a family group in Shreveport, La. a gasoline plant owned by them and located at Locust Ridge, La. and a pipeline owned by Tensas which connected the plant with nearby gas wells in Louisiana and Mississippi (the plant and pipeline are hereinafter referred to collectively as "the Locust Ridge properties") (R. 950). Petitioner learned of Jett's option and petitioner and his associate, John Weiler, became interested in acquiring the Locust Ridge properties (R. 950). In November 1960 petitioner met H. C. Bailey, a Vice President of the Bank, and told Bailey about the availability of the Locust Ridge properties (R. 950, 1159). Bailey immediately expressed an interest in the properties as an investment for Texas San Juan, which was indebted to the Bank and which had a substantial tax loss carryforward (R. 950, 1160).

In December 1960 Bailey and a Bank geologist visited petitioner in Houston (R. 1161). There they reviewed a study of the gas reserves in the Locust Ridge area prepared earlier for Jett by geologist E. P. Ogier to support a proposed expansion of the Locust Ridge plant

(R. 1162). At that time petitioner and Bailey discussed a deal under which (1) the Bank would lend Texas San Juan the $2,000,000 needed to acquire the Locust Ridge properties pursuant to the Jett option plus whatever additional funds would be necessary to expand the plant and extend the pipeline, (2) petitioner would operate the enlarged plant, and (3) petitioner and Texas San Juan would each receive a 50% residual interest in the plant and pipeline after repayment of all loans (R. 951). Petitioner was requested to obtain an updated and expanded reserve report from Ogier and an economic feasibility study of the proposed plant expansion from Gasoline Plant Construction Corporation ("Gasoline Plant") (R. 1162).

On December 29, 1960, petitioner and Weiler secured from Jett a written, exclusive suboption for purchase of the Locust Ridge properties for $2,000,000 (R. 950). The suboption required payment of $200,000 to Jett by January 10, its expiration date (R. 951). It provided that Jett would receive a ⅛ overriding interest in net profits from the properties and that petitioner and Weiler would expand the plant from its then capacity of 25 MMcf (million cubic feet) of gas per day to make it "capable of processing" 40 MMcf per day (R. 1465).[1]

Early in January 1961 Weiler and petitioner returned to New York (R. 1165) and presented to the Bank the written suboption from Jett, a revised Ogier report and a Gasoline Plant report supporting the expense of expanding the plant (R. 951). The latter report was expressly:

> ". . . predicated on processing 40 MMSCFD of a composite plant inlet gas stream of the following analysis at a pressure of 700 pounds per square inch

[1]Petitioner seeks to minimize the importance of that requirement by urging a distinction between "capacity" and "throughput", but the undisputed facts are that his proposal to the Bank was based upon "throughput". See pp. 13-14, *infra*.

and a temperature of 100 degrees Fahrenheit." (R. 1474)

The Bank geologist gave petitioner and Weiler a written list of further documentation which would be required to support the proposed loan and close the deal.[2] It was also agreed that the Bank would hire Houston geologist Bart DeLaat to prepare an independent reserve report to support the loan (R. 1166-68). Finally, Bailey pointed out that the deal looked too thin to permit payment of the 1/8 override to Jett and made it a requirement that Martin contact Jett and obtain Jett's consent to subordinate his interest to repayment of all loans (R. 1178).

Although DeLaat was asked to proceed on a "crash" basis in view of petitioner's self-imposed time limitations under the suboption from Jett, it became apparent that there was no possibility of closing the loan by January 10 (R. 1177), and Martin was not prepared to advance any of his own funds even for a down-payment to Jett (R. 1220). At Martin's request, Bailey called Jett to assure him that the Bank was keenly interested in the deal and would make up its mind whether to go ahead and lend the first $200,000 by January 16, 1961 (R. 1180-82). Jett then gave Martin an oral extension of the written suboption to January 16 (R. 1135).

While DeLaat was pursuing his reserve study, he advised the Bank that Phillips Petroleum Company ("Phillips") controlled some of the gas reserves in the Locust Ridge area (R. 1431). On January 12, 1961, Bailey decided to contact Phillips, a customer of the Bank.[3] On Janu-

[2]The list, and petitioner's testimony concerning it, appear in Appendix A hereto.

[3]Bailey testified that he contacted Phillips to obtain information and advice (R. 1030-32). The District Court, in ruling upon the cross-motions for summary judgment, assumed without deciding that Bailey was acting in bad faith when he contacted Phillips (R. 953-54).

ary 13, G. W. McCullough, the Phillips officer having jurisdiction over gasoline plants, called Bailey back (R. 951). During the course of this conversation, Bailey inquired whether Phillips would be interested in participating in the transaction, and McCullough outlined the terms on which Phillips would be interested, which were that Phillips (1) would operate the plant, (2) would receive the brokerage fees for the sale of its products, and (3) would receive a 50% residual interest after payout of the loan. This proposal, obviously, would depose Martin as operator of the plant and necessarily reduce his residual interest well below 50%. Both parties to the conversation expressed an interest in pursuing the matter further, and a meeting on January 16, in Houston, was agreed upon (R. 952).

Bailey then advised Martin of the prospective entry of Phillips into the deal and of the planned January 16 meeting (R. 1152, 1197). Martin protested any participation by Phillips and, without telling Bailey, immediately began seeking financing from other sources (R. 1147-48).

On January 16 representatives of the Bank, Phillips, Gasoline Plant, and DeLaat met in Houston (R. 952). DeLaat presented his reserve report, in which he concluded that the reserves were insufficient to support the planned expansion of the plant to either a throughput or a capacity of 40 MMcf per day (R. 1051, 1405). Petitioner and Weiler were invited to join the meeting after lunch but were delayed in arriving because they decided to bring along petitioner's attorney, Ben H. Schleider, Jr., and Schleider was not immediately available (R. 1402-03, 1412).

When petitioner and his associates finally arrived, they were advised that the known gas reserves available were insufficient to support the project as proposed by petitioner, but that the quick study for which the group had time during the meeting suggested that a 25 MMcf throughput might

be attainable (R. 1210-11, 1404-05). It was agreed that all present would meet again the following day to pursue the matter further (R. 1217).

When petitioner and Weiler left the meeting late on January 16, they had yet not secured agreement from Jett to subordinate his ⅛ override (R. 879, 1227-28). Nor was there *any* evidence of sufficient gas reserves to support the plant expansion required under petitioner's suboption from Jett.[4] Finally, petitioner never produced any of the additional feasibility reports and preliminary contracts first required by the Bank on January 5, 1961, as a condition to its providing the financing (see Appendix A, pp. 6a-7a).

After the January 16 meeting broke up, petitioner and Weiler contacted Bailey in a Houston hotel and advised him that they were withdrawing their "loan application" (R. 1414-16). Petitioner secured a further oral extension of his suboption from Jett until January 25 (R. 952). Moreover, Jett unquestionably remained willing to deal with petitioner after that date.[5] However, petitioner's efforts to secure financing from other sources, which he had commenced on January 13, were unsuccessful (*ibid.*).

Jett then commenced to deal directly with Phillips, Phillips subsequently contacted Bailey, and eventually a revised transaction was arranged pursuant to which Texas San Juan became the owner and Phillips the operator of the

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[4]The revised Ogier report dated December 29, 1960, submitted by petitioner to the Bank, covered only undedicated (new) reserves, not dedicated (existing) reserves (R. 1481-96; see also R. 983-84, 1455). DeLaat did not disagree with Ogier's estimate of undedicated reserves (R. 1050-51, 1481-96). Ogier projected deliverability of 16.67 MMcf per day for the undedicated gas (R. 1482). The crucial question, the answer to which petitioner never supplied, was where the other 23.33 MMcf per day was coming from. The plant at that time was processing an average of 11 MMcf per day (R. 1499).

[5]Jett offered petitioner a suboption beyond January 25 for $10,000, but petitioner was unwilling to put up the money (R. 759, 1179).

plant (R. 952-53). Under the transaction as closed, Jett did not receive a 5/8 override on net profits from the plant and plant capacity was not expanded as required by petitioner's suboption from Jett (*compare* R. 1465-66 *with* R. 1535, 1560).

Argument

THE UNDISPUTED FACTS ESTABLISH THAT PETITIONER WAS NOT "INJURED IN HIS BUSINESS OR PROPERTY" BY ANY ACT OF RESPONDENTS.

A plaintiff in any private action brought under the federal antitrust laws must allege and prove that he has been "injured in his business or property." Clayton Act § 4, 38 Stat. 731 (1914), 15 U. S. C. § 15 (1964). Based upon his own admissions, the Fifth Circuit held that petitioner has not been injured in any business or property within the meaning of § 4.

Petitioner's principal attack on the holding below is simply an attempt to have this Court ignore the material facts found to be undisputed or admitted by petitioner (Pet., pp. 20-32).

Petitioner seems to have abandoned any contention that he has standing to sue based upon injury to any existing "business" conducted by him. Certainly the undisputed facts show petitioner could not have been injured in the business of owning or operating a gasoline plant and gathering system, for he admits that he has never owned or operated such a plant or system (R. 1220). The most that can possibly be contended for petitioner is that he had a hope or expectation of entering a new business.

Petitioner *hoped* by exercise of the limited suboption he held to acquire the Locust Ridge plant and gathering system and to expand both the gasoline plant and gathering system to a throughput of 40 MMcf of gas per day.

Since petitioner admittedly was not prepared to finance any portion of the proposed acquisition himself (*ibid.*), he *hoped* that the Bank would provide 100% of the capital required to pay both the $2,000,000 purchase price under the suboption and the cost of expansion required by the suboption. Although he implies that he had some sort of commitment from the Bank to provide such financing, he has never dared to allege that any firm agreement was reached. Rather, he has admitted that the alleged commitment was subject to a number of conditions. Before those conditions were met, and while negotiations were still in progress, petitioner voluntarily withdrew his proposal from the Bank. He failed to secure other financing and his suboption expired. Thus, at all times petitioner had at most only a *hope or expectation* of going into a business in which he had never before engaged and which would require complete financing by the Bank or someone else. The Fifth Circuit correctly concluded that petitioner was not "injured in his business" within the meaning of § 4 of the Clayton Act.

Petitioner now contends that both his negotiations with the Bank and his suboption from Jett achieved the status of "property" within § 4. Analysis of those contentions reveals that they too were properly rejected by the courts below.

Petitioner grasps at a slender reed indeed in contending that his negotiations with the Bank achieved the status of "property". The undisputed facts show that the negotiations had not progressed beyond the initial stage. Moreover, it is undisputed that the Bank had imposed several conditions as prerequisites to its financing the acquisition, and that petitioner made no attempt to satisfy those conditions.

Petitioner and his associate, Weiler, have admitted that their proposal to the Bank and their subsequent negotiations with the Bank were based upon a throughput of

40 MMcf per day (R. 1221-22, 1392-93). Understandably the Bank officers desired an independent appraisal of the potentials of the properties. It was therefore agreed that DeLaat would make such an appraisal so that the Bank would have independent assurance that this condition to the possible financing would be met (R. 1166-67). DeLaat estimated the undedicated reserves at 119.6 billion cubic feet and stated flatly that this reserve figure would never support expansion to 40 MMcf per day throughput (R. 1050-51). His estimate of reserves and statement of possible throughput have never been disputed.

It is hardly an answer to urge, as petitioner does (Pet., pp. 21-22), that his obligation under the suboption was a condition subsequent rather than a condition precedent. The plain fact is that the Bank was not going to lend the money required to purchase and expand the plant unless it was satisfied that the reserves were there to support the 40 MMcf throughput upon which petitioner's favorable economic projections were based.

Equally important are the other conditions which were imposed by the Bank as prerequisites to its providing the financing. Those conditions were set forth in a letter dated January 5, 1961, from the Bank geologist to Weiler (see Appendix A, pp. 6a-7a). Petitioner admits that he saw the letter and its attached list of conditions; hence he was quite aware that those conditions were also imposed by the Bank as prerequisites to its financing the transaction. Petitioner was required by the Bank to obtain: (1) an agreement by Jett to defer receiving any income under his 1/8 override until the proposed loans were repaid, which petitioner never obtained (R. 1228); (2) up-to-date deliverability reports from geologist Ogier, which petitioner never obtained (R. 1231); (3) gas analysis tests on all wells connected to the gasoline plant but not previously tested, which petitioner never obtained (R. 1232-33); (4) written turnkey con-

tracts for construction of the proposed expansion facilities, which petitioner never obtained (R. 1233-34); and (5) proof of contracts for the marketing of the liquid products from the gasoline plant, which petitioner never obtained (R. 1234-35).

It should be emphasized that all of the foregoing conditions were imposed by the Bank seven days before the inception of the "conspiracy" alleged by petitioner. The letter to Weiler setting forth the conditions is dated January 5, 1961; the Bank did not contact Phillips until January 12, 1961. Thus the undisputed facts, taken from petitioner's own testimony, make it clear that his uncompleted negotiations with the Bank did not achieve the status of "property" within § 4.

Petitioner also contends that his suboption from Jett constitutes "property" within § 4 and that respondents "injured" his suboption. But petitioner has no claim based upon the suboption because:

1. The suboption was void under Louisiana law after January 10, 1961.

2. The suboption was expressly conditioned upon an expansion of the plant which the undisputed facts show was not feasible.

3. In any event, there is no evidence—indeed no claim—that any respondent prevented or impeded him from obtaining financing elsewhere and exercising the suboption independently of the Bank and Phillips.

Applicable Louisiana state law destroys any argument that Martin's suboption achieved the status of property. His written suboption expired by its terms on January 10, 1961. (The first contact between the Bank and Phillips was on January 12, 1961.) After January 10, 1961, Martin held only an oral suboption on Louisiana real property and

immovables, and the Statute of Frauds provision in the Louisiana Civil Code declares such option to be null:

> "Art. 2440. All sales of immovable property shall be made by authentic act or under private signature.
>
> "Except as provided in article 2275, every verbal sale of immovables shall be null, as well for third persons as for the contracting parties themselves, and the testimonial proof of it shall not be admitted."

Hoth v. *Schmidt,* 220 La. 249, 56 So. 2d 412 (1951), holds that a promise or option to sell real estate is not valid unless given in writing, and that consequently an extension of the time stipulated in a written promise or option to buy or sell real estate must be in writing in order to be valid. And the Louisiana statute declares an oral contract for the sale of immovables to be null not only as to the parties of the contract, but to third persons as well. The Fifth Circuit correctly held that the Louisiana statute completely negates petitioner's standing to sue under § 4.

Assuming, however, that the oral suboption could have been enforced after January 10, 1961, petitoner also must show that he could have complied with the conditions of his suboption. As the Fifth Circuit pointed out, petitioner's suboption with Jett (R. 1465) required an expansion of the Locust Ridge gasoline plant from a capacity of 25 MMcf of gas per day to 40 MMcf and petitioner's proposal to the Bank was predicated upon a gas supply of 40 MMcf per day. Weiler testified as follows:

> "Q. It is true, is it not, Mr. Weiler, that both your agreement and that of the Plaintiff Martin and Southwest Gas Gathering Company with G. H. Jett, as well as all of your negotiations with the Chemical

Bank, were on the basis of a gas supply and a plant capacity of 40,000,000 cubic feet per day?

"A. Yes, sir." (R. 1392)

Thus the critical point is whether petitioner could have complied with this condition. All of the evidence—including petitioner's own[6]—shows that a 40 MMcf throughput could not be achieved, and the transaction actually consummated later did not include such plant expansion. Certainly the Bank was not going to advance the funds necessary for the required expansion of the plan to "be capable of processing 40,000 Mcf of gas per day" (R. 1465) until it was satisfied that there were proven reserves to support such expansion. Proof of reserves sufficient to support a throughput of 40 MMcf per day is therefore an essential part of petitioner's case, and both courts below found that there is no such proof.

Realizing that he could not have complied with the basic condition of his suboption, petitioner resorts to a strained analysis of the difference between "capacity" and "throughput" (Pet., p. 23). This is another attempt to have this Court ignore the undisputed facts pointed out by the courts below. Treating the language of the suboption as a maximum rather than a minimum requirement, petitioner argues that the 40 MMcf per day plant expansion upon which his deal was predicated really only required a 33 MMcf per day "throughput" and therefore that reserves to support a throughput of 40 MMcf per day were not required. The undisputed fact is that every projection of payout of the plant, every study of the deal as proposed by petitioner, was based upon a *throughput* of 40 MMcf per day (see R. 798-99, 1476). A sustained daily throughput yields income, while excess, unused capacity yields only additional cost. No

[6]See n. 4 at p. 7, *supra*.

amount of legalistic technical analysis in 1966 can obscure the undisputed fact that the parties in 1961 were concerned with how much money they could make from a 40 MMcf throughput and the further undisputed fact that the gas needed for that throughput was simply not there.

Finally, there is no showing that any of the respondents impeded petitioner's efforts to obtain financing from other sources. In other words, petitioner has not shown that he suffered any "injury" to the suboption from Jett. Petitioner was free at all times to seek other financing and in fact he did so commencing January 13 when it became apparent that he could not meet the conditions imposed by the Bank (R. 1147-48).

Petitioner repeatedly emphasizes that Jett was ready to honor the oral extension of the suboption, first to January 16 and then to January 25. Indeed, undisputed testimony shows that Jett remained willing to sell to petitioner even after January 25. Petitioner simply never could find the money. But it is not even alleged that respondents did anything whatsoever to prevent him from obtaining a loan elsewhere.

At the outset of this litigation Circuit Judge Hutcheson on July 16, 1962, denied respondents' preliminary motion to dismiss for failure to state a cause of action under the federal antitrust laws, but expressed his opinion that this was not an antitrust case (R. 124). That forecast has certainly been proven correct. From the extensive record thereafter compiled, Chief Judge Connally also concluded that petitioner has no claim for relief against respondents under the antitrust laws.

Affirming the District Court, a unanimous Fifth Circuit held that petitioner by his own testimony was unable to meet the basic requirement of § 4 that he be "injured in his business or property." Each judge who has considered this case has concluded that petitioner has not shown himself to have a claim under the federal antitrust laws.

Conclusion

For the foregoing reasons, the petition for a writ of certiorari should be denied.

November 15, 1966

Respectfully submitted,

JOHN W. BARNUM,
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1 Chase Manhattan Plaza,
New York, N. Y. 10005

DENMAN MOODY,
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Of Counsel.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregong brief was served by me by mailing the same, with air mail postage prepaid, to Ben H. Schleider, Jr., Esq., appellant's attorney of record, at his address of record, on November 15, 1966.

JOHN W. BARNUM,
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1 Chase Manhattan Plaza;
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APPENDIX A

Deposition of Robert H. Martin and exhibit thereto

MR. JEFFERS: All right. The first item listed in Category 33 in the No. 1 receipt for documents produced by your counsel is described as original letter—or letter dated January 5, 1961, from Chemical Bank to John L. Weiler, Southwest Gas Gathering Company, with list attached.

May I see that document, please, Counsel?

I would like to ask that the letter dated January 5, 1961, addressed to Mr. John Weiler, Southwest Gas Gathering Company, re Locust Ridge Plant, bearing no signature but being on the letterhead of Judson L. Anderson, Oil and Gas Department, Chemical Bank New York Trust Company, be marked for identification as DM-15, and that the attached list of seven items accompanying the letter be marked as DM-15-A.

(The instruments referred to were marked "DM-15" and "DM-15-A" for identification, copies of which are attached hereto).

Q. Mr. Martin, I show you the documents that have been marked DM-15 and DM-15-A and will ask you whether you recall having previously seen the letter marked DM-15 and the attached list marked DM-15-A?

A. What is your question?

Q. Whether you recall having previously seen the letter marked DM-15——

A. Yes, sir.

Q. —and the list marked DM-15-A.

Did Dr. Judson L. Anderson deliver this letter and list to Mr. Weiler at the Chemical Bank on January 5, 1961?

A. I think so.

Appendix A

Q. Paragraph 1 of the letter, paragraph numbered in parenthesis 1, calls for an up to date version of the report by C. M. Gribble of October 5, 1957. This revised report should be made by Mr. Ogier and should include an estimate of the reserves as of January 1, 1961, and a deliverability schedule of years from the three fields involved, namely, Rodney Field, Locust Ridge Field, North and South, and Lake St. John Field. Was that report called for by that paragraph ever furnished to the Chemical Bank?

A. I don't believe that work had been completed prior to Mr. DeLaat—or I don't know whether it was really ever started. But we had discussed this up there. And then, in effect, Mr. Ogier's work was ordered by Mr. Jett, not by us, and we passed it along to him. And in the meantime Mr. DeLaat was going to do some of the work in there. And then I don't recall any other report than the ones we were talking about this morning.

Q. The paragraph numbered 2 in that letter calls for gas analysis tests on all wells that have not previously been tested. These tests should be conducted in all field both new and old and from the reservoirs that are currently open to production and will be feeding into the plant. These analyses should indicate GPM of the gas for each test. Was that ever done?

A. We did not do it over.

Q. So that no additional analysis tests were made or caused to be made by you and furnished to the Chemical Bank after receipt of the letter of January 5, 1961?

A. As I recall, following this letter, when Mr. De Laat was employed that was one of the points that he covered in checking who had made the previous tests and going back and reviewing those records.

Q. But no new or additional gas analysis tests were made or caused to be made by you after receipt of the letter of January 5, 1961?

A. No, sir.

Q. On the attached list Item 1 is "Engineering Reports (Reserve and Deliverability)."

Two, "Well Tests of Fields and/or Wells For Liquid Content To Substantiate Liquid Ratio of Stream over Life of Property."

After receipt of the letter of January 5, 1961, were any additional engineering reports on reserves and deliverability made other than the reports subsequently made by Bart DeLaat?

A. I don't recall any.

Q. Were any well tests of fields and/or wells for liquid content to substantiate liquid ratio over stream over life of property incorporated in any engineering reports made subsequent to January 5, 1961?

A. No, not that I know of.

Q. Item 2 of the list of seven items is "Engineering and Feasibility Report on Gathering and Transmission Lines and Turn-key Contract for its Construction." Did the report subsequently received from Gasoline Plant Construction Corporation constitute an engineering and feasibility report on gathering and transmission lines?

A. Yes.

Q. But was there included or ever tendered to the Chemical Bank a turn-key contract for the construction of proposed new gathering and transmission lines?

A. We never yet have been asked to get that. That was the procedure that he was recommending to be followed as we progressed.

Q. Item 3 is "Engineering and Feasibility Report on Processing Plant and a Turn-key Contract on Construc-

tion of New Facilities; Performance Guaranty on Entire Plant Facilities." Again, did the Gasoline Plant Construction Corporation report constitute an engineering and feasibility report on the processing plant?

A. Yes.

Q. But again, there was never tendered, was there, any turn-key contract on the construction of new facilities or any performance guaranty on the entire plant facilities?

A. I previously stated that Gasoline Plant had told us and we had in turn given this information to the Bank that the figures they used in their reports were the figures that they would stand behind and take the contract on.

Q. But so far as there actually being tendered a turn-key contract or a performance guaranty in written form, that was never done, was it?

A. We weren't to that point yet.

Q. Item 7 on that list is "Contracts Covering the Sale of Plant Products for at Least Four Years at Prices in Accordance With Platz Oilgram and to be Taken at Rates Which Will Not Require More Than Five Days Storage." Were such contracts for the sale of plant products ever negotiated and tendered to—

A. There were already contracts in existence for the plant products which included any increase in products, and these copies had been made available to the bank.

Q. Were those contracts contracts for at least four years at prices in accordance with Platz Oilgram and to be taken at rates which will not require more than five days storage?

A. I don't think the contracts were complete in accordance with those words and that statement there, but there were contracts that were with big companies and we had every reason to think were satisfactory.

Q. Can you identify the contracts to which you are referring?

A. One contract was with Esso Standard, and the other one was with—I have forgotten the name of it now. But we had copies of the contracts at the time to show to the bank.

Q. Were they among the documents that were left with the bank?

A. Well, I would think so. I don't remember whether they were in there or not.

Q. Were there two such contracts, one with Esso Standard and then another one with another company whose name you can't now recall?

A. Yes.

Q. Do you remember at what point in the January 5 meeting at the Chemical Bank this letter was delivered and attachment was delivered to Mr. Weiler, referring to DM-15 and DM-15-A?

A. No, I don't remember what point. I think while we were there—Dr. Anderson was always present in these meetings, and before departing that day I think this letter was a result of him having studied over what reports were in there and that he set this up somewhat as an outline to follow.

Q. Was there any particular discussion of the letter or did he simply deliver the letter and attachment to Mr. Weiler as an outline of things to be done?

A. I don't remember any specific discussion of it. He might have had it while I was talking with Bailey and Zwick about something else.

Q. I believe you said that your visit to the Chemical Bank on January the 5th you thought was afternoon and that it was not a very long meeting.

A. The best I recall, that's right.

Appendix A

DM-15
J.M.

CHEMICAL BANK NEW YORK TRUST COMPANY
165 Broadway
New York 15, N. Y.

January 5, 1961

Oil and Gas Department
Judson L. Anderson

Mr. John Weiler
Southwest Gas Gathering Company

Re: Locust Ridge Plant Area

Dear Mr. Weiler:

With reference to the information which we consider essential to the adequate appraisal of the gas reserves and engineering we suggest that the following be supplied to us:

(1) An up-to-date version of the report by G. M. Gribble of October 5, 1957. This revised report should be made by Mr. Ogier and should include an estimate of the reserves as of January 1, 1961, and a deliverability schedule by years from the three fields involved, namely, Rodney Field; Locust Ridge Field (North and South); and Lake St. John Field.

(2) Gas analysis tests on all wells that have not presently been tested. These tests should be conducted in all fields both new and old, and from the reservoirs that are currently open to production and will be feeding into the plant. These analyses should indicate the GPM of the gas for each test.

Very truly yours,

JLA:IMS

Appendix A

DM-15A
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1. Engineering reports on (1) reserves and deliverability (2) well tests of fields and/or wells for liquid content to substantiate liquids ratio of stream over life of property.

2. Engineering and feasibility report on gathering and transmission lines, and turnkey contract for its construction.

3. Engineering and feasibility report on processing plant, and turnkey contract on construction of new facilities. Performance guaranty on entire plant facilities.

4. Contracts with producers for (1) in some cases the purchase of gas and (2) in some cases its transmission, and (3) in every case its processing.

5. Contracts with purchasers for (1) in some cases the sale of gas (2) and in some cases its transmission.

6. Contracts with producers for extraction of liquids.

7. Contracts covering the sale of plant products for at least four years at prices in accordance with Platts' Oilgram and to be taken at rates which will not require not more than five days' storage.